

**United States Postal Service and National Postal Mail Handlers Union Local 300, AFL-CIO-CLC, a Division of Laborers' International Union. Case 2-CA-24413(P)**

February 27, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On September 12, 1991, Administrative Law Judge Steven Davis issued the attached decision. The General Counsel and the Charging Party each filed exceptions and supporting briefs. The Respondent filed cross-exceptions, a supporting brief, and a reply brief to the exceptions of the General Counsel and the Charging Party. The Charging Party filed a reply brief to the Respondent's cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs<sup>1</sup> and has decided to affirm the judge's ruling, findings, and conclusions and to adopt the recommended Order.

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

<sup>1</sup> We grant the Respondent's motion to strike from the Charging Party's brief in support of exceptions a reference to arbitration awards appended to the Charging Party's posthearing brief to the judge. These awards issued prior to the hearing but were not introduced into the record.

*Geoffrey Dunham, Esq.*, for the General Counsel.  
*Andrew L. Freeman, Esq.*, of North Windsor, Connecticut,  
for the Respondent.  
*Raymond G. Heineman and Albert Kroll, Esqs.*, of Verona,  
New Jersey, for the Union.

**DECISION**

**STATEMENT OF THE CASE**

STEVEN DAVIS, Administrative Law Judge. Pursuant to a charge filed on June 7, 1990, by National Postal Mail Handlers Union Local 300, AFL-CIO-CLC, a Division of Laborers' International Union (Union or Local Union), a complaint was issued on October 19, 1990, by Region 2 of the National Labor Relations Board against the United States Postal Service (Respondent).

The complaint, as issued, alleged that Respondent violated the Act by refusing to furnish the Union with certain information. The information related to certain grievances filed by the Union in behalf of seven employees who were suspended because of their arrests for alleged drug possession and sale.

The information requested, as set forth in the original complaint, consisted of:

all investigative memoranda and all other evidence including copies of video tapes of the actual occurrence of the alleged misconduct by the . . . employees, samples of physical evidence which was seized during the video taped transactions, and the names of confidential investigative sources who participated and/or witnessed the transactions which led to the arrests.

During the hearing, General Counsel amended the complaint to modify the type of information requested. The amendment will be discussed, *infra*.

Respondent's answer denied the material allegations of the complaint, and set forth an affirmative defense, which will be discussed, *infra*. On April 17, 1991, a hearing was held before me in New York City. On the entire case, including my observation of the demeanor of the witnesses and after consideration of the briefs filed by the General Counsel, the Union, and the Respondent, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent admits and I find that the Board has jurisdiction over it by virtue of Section 1209 of the Postal Reorganization Act of 1970.

**II. LABOR ORGANIZATION**

The complaint alleges that the Union is a labor organization within the meaning of the Act. Respondent denies that allegation and its affirmative defense states that the Union lacked standing to file the charge, which was signed by its attorney.

Respondent argues that pursuant to the Postal Reorganization Act, the National Post Office Mail Handlers, Watchmen, Messengers and Group Leader Division of Laborers' International Union of North America, AFL-CIO (National Union) and not this Local Union is a labor organization within the meaning of the Act, and that it has a collective-bargaining relationship with the National Union only. It contends that the Local Union, the Charging Party here, is limited in its authority to only certain activities set forth in article 30 of Respondent's contract with the National Union. Respondent further argues that inasmuch as article 30 does not include the duty to bargain, Respondent has no obligation to bargain with the Local Union, or provide it with information.

Rather, Respondent asserts that the Local Union's shop stewards, not the Local Union itself, administers the agreement at the local post office. It concedes that the stewards are agents who possess authority to request information and file 8(a)(5) charges in behalf of the National Union, but not the Local Union.

Accordingly, Respondent moves to dismiss the complaint on the ground that the Charging Party, the Local Union, had no standing to file the charge. I deny Respondent's motion.

Section 102.9 of the Board's Rules and Regulations states that "a charge . . . may be made by any person." Section 2(1) of the Act defines a "person" as "one or more individuals, labor organizations . . . legal representatives." Accordingly, the Local Union properly filed this charge, which was also properly signed by its attorney.

With respect to its argument concerning the status of the Local Union, Respondent made a similar argument, which

was rejected by the Board. *Postal Service*, 301 NLRB 709 (1991).

Accordingly, I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act, and had standing to file the charge.

### III. THE COLLECTIVE-BARGAINING UNIT

The complaint alleges that the Union has been the exclusive collective-bargaining representative of the following employees:

All mail handlers excluding managerial and supervisory personnel, professional employees, personnel employees, security guards, postal inspection service employees, rural letter carriers, city letter carriers, maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, mail equipment shop employees and mail transport equipment centers and supply center employees.

Respondent denies this allegation of the complaint, and asserts that the collective-bargaining unit is as set forth in the collective-bargaining agreement. The contractual unit is substantially similar to that set forth above. There are certain omissions from the excluded categories, but such omissions do not affect the issues.

Richard Thomas, the administrative vice president of the Local Union, testified that the Local Union represents all mail handlers in the bargaining unit.

I accordingly find that the appropriate collective-bargaining unit is as stated in the collective-bargaining agreement, which is substantially set forth above.

### IV. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Facts*

Respondent's Postal Inspection Service is authorized to conduct investigations concerning all postal-related violations, including narcotics investigations, mail fraud, and internal investigations.

Kevin Burke, the assistant postal inspector in charge of criminal investigations in New York and an admitted agent of Respondent, testified that he supervised a team of postal inspectors which investigated the sale of narcotics in 1989 and 1990. The team included nine inspectors and an unspecified number of confidential informants. The investigation included such devices as video tapes, audio tapes, and still photographs.

As a result of the investigation, Respondent's postal inspectors arrested 24 persons on April 30 and May 1, 1990. Seven mailhandler employees of Respondent, who were employed at the Church Street Station were among those arrested. They are Curtis Brown, Willie Brunson Jr., Vivian Hocknell, John Johnson, Kevin O'Malley, Victor Pratts, and Byron Smith, who were arrested for alleged narcotics trafficking. Respondent placed them on emergency suspension pending further disciplinary action.

Anthony Harper, a mailhandler at the Church Street Station and the Union's acting shop steward, testified that on May 10, 1990, he requested of Postal Inspector Hayes the investigative memoranda for the seven employees, and "all other information concerning them." Aside from the inves-

tigative memoranda, he did not request any specific items since he did not know what information or evidence Respondent had against them. Hayes replied that Harper would have to make a request to Respondent's labor relations department for the information he sought.

That day, Harper made written requests to Labor Relations Representative Walden-el for the investigative memoranda and "all other evidence against employee" for the seven suspended workers. The document stated that the documents were requested "in order to properly identify whether a grievance does or does not exist and if so, the relevancy of the document concerning the grievance/complaint." He told Walden-el that he needed the information in order to file a grievance in behalf of the employees. Walden-el said that the postal inspectors had the investigative memoranda, and that when she received those reports from the inspectors, she would furnish it to Harper. She said that he would have to obtain the other information from the inspectors.

On May 15, Harper made the same written requests to Inspector Hayes. Hayes told him that the investigative memoranda would be furnished through the labor relations department, but the other requested information would "hinder the investigation of the employees." Hayes did not say how the investigation would be hindered, and Harper did not offer an alternative to resolve that issue, as he believed that Hayes "left no room for that."

Hayes forwarded the requests to Inspector Burke. On May 23, Burke replied to Harper as follows:

The Postal Inspection Service provides Postal Management with Investigative Memorandums on which they base their administrative actions. All other evidence that is pertinent to the ongoing criminal investigation will not be released.

It is the responsibility of Postal Management to provide the Union with all reports and documents they have received from the Inspection Service.

After receiving that letter, the Union made no further information requests.

Richard Thomas, a local union official, testified that the grievance procedure consists of four steps. Step 1 consists of a meeting between the shop steward and supervisor, step 2 is a meeting with the steward and a top level manager, step 3 is processed by the Union's regional director, and thereafter the grievance is taken to arbitration or to step 4, which is handled by the national union in its Washington, D.C. headquarters.

Thereafter, Harper filed grievances in behalf of each of the seven workers. The grievances essentially stated that each of the grievants was entrapped, and improperly arrested and suspended for selling a controlled substance to confidential informants. A step 1 grievance meeting was held on May 17, at which the grievances were denied by the employees' supervisors. The supervisors told Harper that this was a postal inspection matter which was being investigated by the inspectors. The Union proceeded to step 2.

In late May, the Union was given an investigative memorandum concerning each employee. The investigative memorandum is a detailed report made by the postal inspector of the investigation of the individual. It contains statements concerning the dates, places, and times of the alleged mis-

conduct, the specific details of each transaction, the postal service time records of the employee, crime laboratory reports concerning the nature of the substance seized, and a form containing the individual's "Miranda" rights, which they were apparently asked to sign on their arrest. It does not contain the identity of the confidential informant.

Harper stated that aside from the investigative memoranda, the Union has not received any of the requested information, which it needs to properly defend the employees, or to discover whether it has a valid grievance.

All seven employees were employed at the Church Street Station, all were engaged in allegedly illegal conduct on company time. Two, Brown and Brunson, allegedly engaged in certain drug transactions inside the Church Street Station. All were arrested as part of the investigation into alleged drug activity among employees employed at the Church Street Station. Three were charged with the sale of cocaine, one was charged with distribution of cocaine, two were charged with distribution of narcotics, and one was charged with theft of Government funds. Five were arrested on April 30, 1990, and two were arrested on May 1. Six of the seven employees pleaded guilty and one, Hocknell, was convicted after trial, and all either resigned, retired, or were removed from Respondent's service.

On October 1, 1990, the Union withdrew its grievances.

Between the time of his arrest and his guilty plea, each employee who pled guilty was given, pursuant to criminal discovery requirements, a copy of the audio tape recording of the drug transaction or relevant parts thereof, a copy of a transcript of that transaction, the laboratory report which analyzed the drug seized, and was offered the opportunity to examine the cocaine seized. Each employee declined the opportunity to examine the drug. In addition, employee O'Malley was given a photograph of himself and the confidential informant taken at the Church Street Station. Also, prior to Hocknell's trial, she was given the name of the confidential informant, and the names of all other witnesses.

Postal Inspector Burke testified that confidential informants were used in the investigations which led to the arrests of the seven employees, and that some or all the identities of the informants were disclosed to the U.S. Attorney's office, which was responsible for prosecuting the workers. Their identities were not disclosed to anyone other than the U.S. Attorney's office, except in the case of Hocknell. Burke stated that the Postal Inspection Service has a policy of protecting the identities of the informants because disclosure of any information concerning them could put them in danger, jeopardize future or ongoing investigations, impair the trust the informants have in the Inspection Service, and otherwise make it very difficult for the Service to conduct its investigations.

Burke further stated that some of the informants used in this investigation were employed by Respondent at the time of the arrests. He also said that at the time he wrote the letter to Harper on May 23, the criminal investigations concerning the seven employees were ongoing. He explained that the investigation into criminal activity does not end with the arrest of the individual, but rather continues throughout the trial, and additional information divulged might lead to further charges or additional suspects. Burke did not know if the roles of the informants were completed at the time of the arrests.

In response to a question as to how the identity of the informants could be revealed through the disclosure of the information requested, Burke stated that such identities could have been revealed through an audio tape by voice analysis, and comments and innuendos in the informant's speech.

#### Analysis and Discussion

In the original complaint, General Counsel alleged as the violation Respondent's failure and refusal to furnish to the Union investigative memoranda, and all other evidence including copies of video tapes of the criminal misconduct, samples of physical evidence seized during the transactions, and the names of confidential investigative sources who participated and/or witnessed the transactions which led to the arrests of the employees. It is further alleged that the information requested is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative, and for its use in its investigation and processing of the grievances concerning the suspensions of those employees.

At the outset I should note that the Union did receive the investigative memoranda for all seven employees in late May, during the grievance proceedings.

The Supreme Court has stated that "there can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties." *NLRB v. Acme Industrial Co.*, 385 U.S. 435-436 (1967). The standard for determining the relevancy of the requested information is a "liberal discovery-type standard." *Acme*, supra at 437.

However, there are certain circumstances where a union may not receive all the information it requests, and where a union's interest in obtaining information will not predominate over other interests. This is particularly so where an employer raises the claim of the confidentiality of the information requested. *Detroit Edison v. NLRB*, 440 U.S. 301 (1979).

This case is controlled by *Pennsylvania Power Co.*, 301 NLRB 1104 (1991). In that case the employer prohibited the use, sale, or possession of drugs on company property by employees, and prohibited drug use during off-hours if that use impaired on-the-job performance. Pursuant to that policy, if it is suspected that an employee is under the influence of drugs, he may be sent to a physician for testing. Certain informants supplied information which led to the testing of 10 employees who were suspended or discharged. Grievances were filed by the union which asked for the names of the informants, the statements they made, and other information. The employer supplied certain information, including the names of the employees investigated, accreditation of the testing facility, the names of management personnel who interviewed the disciplined employees and other persons present at the interviews, and copies of statements signed by the interviewed employees. However, the employer refused to disclose the identity of the informants or any statements made by them.

The Board "balanced the [employer's] interest in maintaining the confidentiality of the identity of its informants and the contents of their disclosures and the union's need for information to evaluate the basis of the decision to test the employees," and held that the employer did not violate the Act by refusing to disclose to the union the names and ad-

dresses of the informants or their statements. The Board further held, however, that the employer was required to furnish a summary of the informants' statements so that the union could evaluate the basis of the employer's suspicion of the disciplined employees' drug use. The Board noted, however, that the summary need not contain any information from which the identity of the informants could be ascertained.

The Board's expression of policy reasons in reaching its decision in *Pennsylvania Power*, supra at 1107, is especially applicable here:

It is incumbent on us to examine the facts of this case in light of the surrounding circumstances. To overlook the pervasive drug problem in this country and in the workplace, and to disregard the violence that accompanies that national concern would be unrealistic and contrary to national policy. This case compels us to weigh these formidable problems against a national labor policy which favors disclosure of information.

The information sought by the Union was unquestionably relevant to the cases of the seven grievants. The employees were suspended following their arrests during an investigation into alleged drug sales by workers at the Church Street Station. The information requested all related to the basis on which the employees were suspended. The information was therefore "relevant to an intelligent evaluation of the validity of the charges by the union, so as to enable the union to decide whether to process the grievances to an arbitration hearing." *Square D Electric Co.*, 266 NLRB 795, 797 (1983).

This case presents a stronger factual situation than *Pennsylvania Power*. That case involved the suspension and discharge of employees after a private investigation by a private employer without the intervention of law enforcement authorities. Here, the employees involved allegedly violated Federal laws, and criminal investigation was launched, which led to criminal prosecution. In addition, the alleged crimes all occurred on Government time, and in two cases, on Government property.

Notwithstanding the relevance of the requested information, I find, pursuant to *Pennsylvania Power*, that the Union is not entitled to the information it requested. With respect to the information requested, specifically "all other evidence" including the audio tapes and video tapes of the drug transactions and the names of the confidential informants, the Respondent's "confidentiality interests are entitled to unusually great weight." As Inspector Burke testified, the audio tapes could lead to the identification of the informants through voice analysis and speech patterns. Burke credibly testified that certain of the informants were employed by the Respondent at the time of the arrests of the employees, and the Postal Inspection Division has a policy of not identifying confidential informants it uses in its investigations. The reasons for this policy are the protection of the informants, ensuring their trust in the Inspection Division, and an interest in protecting the confidentiality of future investigations. Further, such a disclosure might impair the ongoing investigations which may have been begun as a result of the current investigation. Based on these considerations, the Board in *Pennsylvania Power*, supra, held, and I find, that the employer need not disclose the identities of the informants. *New*

*Jersey Bell Telephone Co.*, 300 NLRB 42 (1990), cited by the Union, is therefore inapplicable.

Accordingly, inasmuch as the audio tapes, video tapes, and still photographs would reveal the identity of the confidential informants, Respondent did not violate the Act by refusing to furnish such information to the Union.

With respect to the Union's request for the physical evidence, the drugs, seized in the transactions, it should be noted that each employee was given the crime laboratory report containing an analysis of the drug seized in his case, and was also given the opportunity of examining such evidence, and each declined to do so. Under these circumstances, I do not believe that Respondent was required to furnish the Union with samples of the physical evidence.

General Counsel, apparently seeking to avoid the impact of *Pennsylvania Power*, and apparently recognizing that that case stands for the proposition that the Union does not have an absolute right to the identities of the confidential informants, asserts that the Union became entitled to that information on its disclosure to the employees. Thus, General Counsel amended the complaint to allege that Respondent violated the Act by failing to turn over the requested information to the Union at the time it furnished the employee with such information. Thus, he alleges that, in the case of Hocknell, who was given the name of the informant prior to her trial, Respondent violated the Act by not furnishing the Union with the identity of the informant at the time that it provided that information to Hocknell. Similarly, General Counsel asserts that when the other employees were given the audio tapes, and when Brown was given a photograph of an informant and himself, and when the employees were given the opportunity to examine the physical evidence, such information and opportunity should have been provided to the Union at the same time.

I do not agree. The employees were provided with the information set forth above, including evidence against them, by Federal prosecutorial authorities after they were charged with violations of United States criminal laws. The evidence furnished to the employees was provided because of the requirements of criminal discovery procedures. Accordingly, the Union had no right to such information simply because it was furnished to a criminal defendant. To decide otherwise would require the disclosure of the identities of confidential informants to a third party, the Union, with possibly disastrous results, because defendants in criminal cases are entitled to certain information pursuant to due-process requirements. The Union has no right to obtain such information simply because the employees received evidence under these circumstances.

The Union argues that Respondent's claim of confidentiality was not made in good faith because there was evidence that at times, the confidential informant testifies at arbitration hearings. "Respondent cannot legitimately claim a need to keep their identities secret if it plans to have them testify [at an arbitration proceeding]." *Pennsylvania Power*, supra at 1107 fn. 16. Here, however, the grievances were withdrawn prior to arbitration. In addition, Inspector Burke testified that if an arbitration hearing was held prior to the completion of the criminal proceeding, the evidence, including the information requested by the Union, would not have been used in the arbitration hearing.

## CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent by virtue of Section 1209 of the Postal Reorganization Act.

2. Respondent has not violated the Act in any way as alleged in the complaint, as amended.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

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<sup>1</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and rec-

## ORDER

The complaint is dismissed in its entirety.

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ommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.